

Masiongale Electrical-Mechanical, Inc. and Indiana State Pipe Trades Association, Local 661, Petitioner. Case 25–RC–9761

August 27, 1998

ORDER DENYING APPEAL

BY CHAIRMAN GOULD AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

The National Labor Relations Board has considered the Employer's "request for review" of the Regional Director's direction of a mail ballot election.¹ The "request for review" is denied.

In denying the Employer's appeal of the Regional Director's direction of an election by mail ballot, we find that the Regional Director did not abuse his discretion. The Regional Director's rationale for ordering a mail-ballot election is consistent with the Casehandling Manual and our recent decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Under the Casehandling Manual, voting may be conducted by mail ballot where eligible voters are "scattered" because of their duties. In *San Diego*, we set forth guidelines clarifying the circumstances under which it is within the Regional Director's discretion to direct the use of mail ballots. Under the guidelines, a mail-ballot election may be appropriate where employees are scattered because of their job duties in terms of geography and/or varied work schedules, so that all employees cannot be present at a common place at common times to vote manually. Where these situations exist, the Regional Director, in the exercise of discretion, should also consider, inter alia, the desires of the parties and efficient use of Board resources.

In this case, the Regional Director found that the Employer's employees are widely scattered among four jobsites in the Indianapolis area, three jobsites in Muncie, and one site in Marion. None of these sites is on property owned by the Employer, a construction industry employer. Even assuming, as asserted by the Employer, that employees working at the Marion and Muncie jobsites all report to the Employer's Muncie office each morning, there are employees working at four other scattered sites in the Indianapolis area who do not report to the Muncie office.

With respect to the efficient use of Agency resources, the Regional Director found that in order to conduct a manual election at the various places of the employees' employment, the Board agents would be required to travel a significant number of miles and possibly conduct the election on more than 1 day. For example, the Re-

gional Director found that Greenwood, Indiana (in the Indianapolis area), the southern-most location, is approximately 70 miles from Marion, the northern-most location. The Regional Director concluded that a mail-ballot election would conserve agency resources.

The Regional Director's decision thus fits squarely within the parameters of the Casehandling Manual and the guidelines set forth in *San Diego*. Accordingly, we conclude that the Regional Director acted within the discretion which he has been afforded to determine the method of conducting the election, and we deny the Employer's appeal from his determination to hold the election by mail ballot.

CHAIRMAN GOULD, concurring.

I join my colleagues in denying review of the Regional Director's decision directing a mail ballot election. As I stated in my separate opinion in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), I would find the use of mail ballots appropriate in all situations where the prevailing conditions are such that they are necessary to conserve agency resources and/or enfranchise employees. I agree that the under guidelines set forth in *San Diego Gas*, a mail ballot is appropriate in the instant case. I would, however, also find that the Regional Director's reliance on the conservation of agency resources is a sufficient basis for directing a mail-ballot election. See my separate opinions in *Odebrecht Contractors of Florida*, 326 NLRB No. 8 (1998); *Diamond Walnut Growers, Inc.*, 326 NLRB No. 4, slip op. at 3–4 (1998); *San Diego Gas*, supra; *London's Farm Dairy*, 323 NLRB 1057, 1058 at fn. 3 (1997); and *Williamette Industries*, 322 NLRB 856 (1997).

MEMBERS HURTGEN and BRAME, dissenting.

We do not agree that a mail ballot is appropriate.

The unit employees are at four sites in the Indianapolis area, three sites in Muncie, and one site in Marion. The distance from the northern-most site to the southern-most site is 70 miles. The Regional Office is in Indianapolis. Thus, a single Board agent could conduct a "traveling" election in a single day.¹

In addition, the Employer contends that the Marion unit employees and the Muncie unit employees report each morning to the Muncie Office. If this contention is correct (there is no evidence proffered to rebut it), a Board agent would simply travel around Indianapolis and to Muncie. A manual election would clearly be feasible at the five sites.

In these circumstances, there is no showing of an adequate basis for holding a mail ballot election. See our dissent in *San Diego Gas*, 325 NLRB 1143, 1149–1153 (1998). See also *Odebrecht Contractors of Florida*, 326

¹ Although the document filed by the Employer is entitled a request for review, we have treated it as a request for special permission to appeal the Regional Director's direction of a mail ballot election, since that determination was not contained in the Decision and Direction of Election. Pertinent portions of the Regional Director's letter setting forth his reasons for directing a mail ballot election are attached as an appendix.

¹ The Regional Director says that the election might "possibly" extend to a second day. We would not accept this speculation as fact. Further, even if it were true, we would not regard the second day as such an extraordinary expense as to render a manual election infeasible.

NLRB No. 8, slip op. at 2 (1998) (dissenting opinion). Therefore, we would conduct a manual election.

APPENDIX

REGIONAL DIRECTOR'S LETTER

I have decided that the election to be held pursuant to a Decision and Direction of Election issued in the above matter on April 17, 1998, should be held by mail. The following are my reasons:

(1) There are four jobsites widely scattered in the Indianapolis area, and three jobsites in Muncie, and one jobsite in Marion.

(2) None of these sites are on property owned by the Employer.

(3) In order to conduct a manual election where employees could vote at their place of employment, the Board agent(s)

would be required to travel a significant number of miles and possibly conduct the election during more than 1 day. For example, Greenwood, Indiana, the southern most location, is approximately 70 miles from Marion, the northern most location.

(4) Even if the Region required employees to travel to a central location (for example, the Eagle Creek area of Indianapolis for the Indianapolis voters), there would be one-half hour to 45 minutes of travel time involved for the employees coming from Greenwood. Similarly, the employees working in Marion would have to travel about 40 miles to vote at Muncie.

Therefore, in order for voting to be equally convenient to all employees, and in order to conserve agency resources, I conclude that, based on the circumstances of this case, a mail ballot election is warranted.